

1 ARIEL E. STERN  
 2 Nevada Bar No. 8276  
 3 CHRISTINE M. PARVAN  
 4 Nevada Bar No. 10711  
 5 AKERMAN SENTERFITT LLP  
 6 400 South Fourth Street, Suite 450  
 7 Las Vegas, Nevada 89101  
 8 Telephone: (702) 634-5000  
 Facsimile: (702) 380-8572

6 *Attorneys for Defendants*  
 7 *BAC Home Loans Servicing, LP,*  
*Bank of America, N.A., ReconTrust*  
*Company, N.A., and MERS*

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 CODY B. WEST,  
 12 Plaintiff,

13 vs.  
 14 BANK OF AMERICA HOME LOANS,  
 15 BANK OF AMERICA, N.A., BAC HOME  
 16 LOANS SERVICING, LP, RECONTRUST  
 17 COMPANY, and MERS (MORTGAGE  
 ELECTRONIC REGISTRATION SYSTEMS),  
 18 Defendant.

Case No.: 2:10-cv-01950-GMN-LRL

**MOTION TO STRIKE PLAINTIFF'S  
 OPPOSITION TO DEFENDANTS'  
 REPLY IN SUPPORT OF MOTION TO  
 DISMISS AMENDED COMPLAINT**

19 Defendants BAC Home Loans Servicing, LP (also improperly sued as "Bank of America  
 20 Home Loans") ("BAC"), Bank of America, N.A. ("BOA N.A."), ReconTrust Company, N.A.  
 21 ("ReconTrust") (collectively "BOA Defendants"), and Mortgage Electronic Registration Systems  
 22 ("MERS") (collectively "Defendants"), move to strike Plaintiff's Opposition to Defendants'  
 23 Reply in Support of their Motion to Dismiss Plaintiff's Amended Complaint (the "Supplemental  
 24 Opposition") [Dkt. 20].

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1                   **I.**2                   **MEMORANDUM OF POINTS AND AUTHORITIES**3                   **A. Background**

4                   Defendants filed their Motion to Dismiss Plaintiff's Amended Complaint on December 3,  
 5                   2010 [Dkt. 11], arguing that Plaintiff relies on a worthless, fraudulent instrument as the basis of  
 6                   his Complaint, and establishing that each of Plaintiff's causes of action fails: (1) to allege facts  
 7                   setting forth cognizable claims for relief; and/or (2) to comply with Fed. R. Civ. P. 9(b). On  
 8                   December 14, 2010, Plaintiff filed an Opposition.<sup>1</sup> Defendants filed a Reply in Support of their  
 9                   Motion to Dismiss on December 30, 2011.

10                  Plaintiff now attempts to file an untimely and procedurally improper document that is  
 11                  substantively a supplemental "opposition." Plaintiff already filed an Opposition to Defendants'  
 12                  Motion to Dismiss. The rules of this Court do not allow Plaintiff to file another Opposition in  
 13                  order to bolster the substantive failings of his first Opposition and address the arguments  
 14                  contained in Defendants' Reply brief.

15                  **B. The Court Should Strike Plaintiff's Opposition as Improper and Untimely**

16                  LR 7-2 provides for the filing of an opposition to a motion within ten (10) days after  
 17                  service of the motion. The moving party may then file a reply memorandum of points of  
 18                  authorities. Here, Defendants file their Motion to Dismiss, which Plaintiff opposed. Defendants  
 19                  then filed a supporting Reply brief. Plaintiff already filed an opposition, and now attempts to file  
 20                  a second, supplemental opposition.

21                  The Supplemental Opposition is improper and the Court should strike it without giving it  
 22                  any consideration.

23                  **C. Conclusion**

24                  Plaintiff's supplemental opposition seeks to address the substantive failings of the  
 25                  Opposition he filed on December 14, 2010. Pursuant to the rules of this Court, Plaintiff cannot

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28                  <sup>1</sup> Plaintiff styled his Opposition "*Opposition to Motion to Dismiss Amended Complaint and Request for Dismissal of Motion.*"

1 file an Opposition to Defendant's Reply in Support of their Motion to Dismiss. The Court should  
2 strike this improper document.

3 DATED this 21st day of January, 2011.

4 **AKERMAN SENTERFITT LLP**

5 /s/ Ariel Stern  
6 ARIEL E. STERN  
7 Nevada Bar No. 8276  
8 CHRISTINE M. PARVAN  
9 Nevada Bar No. 10711  
10 400 South Fourth Street, Suite 450  
11 Las Vegas, Nevada 89101

12 *Attorneys for Defendants*  
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400 SOUTH FOURTH STREET, SUITE 450  
LAS VEGAS, NEVADA 89101  
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1                   **CERTIFICATE OF SERVICE**

2                   I HEREBY CERTIFY that, on the 21st day of January, 2011 and pursuant to Fed. R. Civ.  
3 P. 5(b), I served via CM/ECF and/or deposited for mailing in the U.S. Mail a true and correct  
4 copy of the foregoing **MOTION TO STRIKE PLAINTIFF'S OPPOSITION TO**  
5 **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS AMENDED**  
6 **COMPLAINT**, postage prepaid (if necessary) to all of the following parties:

7                   Cody B. West  
8                   4316 Blushed Meadows Road  
North Las Vegas, Nevada 890131

9                   *Plaintiff*

10                  \_\_\_\_\_  
11                  /s/     Stacy Warner  
An employee of AKERMAN SENTERFITT LLP

AKERMAN SENTERFITT LLP

400 SOUTH FOURTH STREET, SUITE 450  
LAS VEGAS, NEVADA 89101  
TEL.: (702) 634-5000 - FAX: (702) 380-8572